

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-141847-08

Date: MARCH 03, 2009

LEGEND:

Husband	=
Wife	=
Son	=
Daughter 1	=
Daughter 2	=
Attorney	=
Law Firm	=
Husband's Trust	=
QTIP Trust 1	=
QTIP Trust 2	=
Family Trust	=
Wife's Trust	=

Date 1	=
Date 2	=
Date 3	=
<u>X</u>	=

Dear :

This letter responds to your authorized representative's letter dated September 18, 2008 and other correspondence requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a reverse qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code and to make an election to treat a marital trust as two separate trusts under

§ 26.2652-2(c) of the Generation-Skipping Transfer Tax Regulations.

The facts submitted and representations made are as follows:

On Date 1, Husband and Wife executed pour over wills and revocable trusts, drafted by Attorney at Law Firm.

On Date 2, Husband died, survived by Wife, their child, Daughter 1, and Wife's children: Daughter 2 and Son.

At Husband's death, Husband's Trust was divided into three trusts: QTIP Trust 1, QTIP Trust 2, and Family Trust, all with the same trustees. QTIP Trust 1 was funded with farm property and the terms of the trust direct the trustee to distribute all of the net income to Wife for life, and at her death, to Daughter 1, or if not living, to the then living descendants of Daughter 1. QTIP Trust 1 terminates at the earlier of the death of Daughter 1 or when all trustees have been informed, or have determined, that none of Husband's grandsons intend to conduct certain operations on the property. After termination, the trust assets are to be distributed in equal shares to certain individuals who are the respective grandchildren of Husband and Wife.

QTIP Trust 2 is to be held for the benefit of Wife for life and, at her death, is to be added to, and distributed under the terms of, Family Trust. At Wife's death, Family Trust is to be divided into three separate shares, one share for each of Daughter 1, Daughter 2, and Son, respectively. During each trust's term, distributions may be made only to the named beneficiary (i.e., Daughter 1, Daughter 2, and Son). Each trust will terminate at the death of the named beneficiary and each beneficiary has a testamentary general power to appoint the property of his or her share.

The trustees of Husband's Trust, as executors of his estate, hired Law Firm to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return for Husband's estate. Attorney was primarily responsible for preparing the return. On Schedule M of the Form 706, an election was made under § 2056(b)(7) to treat QTIP Trust 1 and QTIP Trust 2 as qualified terminable interest property. On the Schedule R, Attorney allocated Husband's entire available GST exemption (\$1,000,000) to QTIP Trust 1 but failed to check the box to make a reverse QTIP election under § 2652(a)(3). On the Form 706, Husband's estate indicated the value of the property in QTIP Trust 1 was \$x.

On Date 3, Wife died, survived by Daughter 1, Daughter 2, and Son. Wife's Trust provided for outright distributions to Daughter 1, Daughter 2, and Son. Daughter 1 as, executrix of Wife's estate, hired Law Firm to prepare the Form 706; Attorney was primarily responsible for preparing the return. On the return, the value of the assets of QTIP Trust 1 and QTIP Trust 2 were included in the gross estate under § 2044. On the Schedule R, Wife's GST exemption was allocated to QTIP Trust 2.

In Year 1, the trustees of QTIP Trust 1 received notice that none of Husband's grandsons intend to conduct the operations. Thus, the trustees intend to wind up the trust affairs and distribute the assets to the respective grandchildren of Husband and Wife.

Taxpayers request extensions of time under §§ 301.9100-1 and 301.9100-3 to make the reverse QTIP election under § 2652(a)(3) with respect to QTIP Trust 1 and to make an election to treat QTIP Trust 1 as two separate trusts pursuant to § 26.2652-2(c) so that one trust has an inclusion ratio of zero and the other trust has an inclusion ratio of one for GST tax purposes. The reverse QTIP election would be treated as applying only to the trust with the zero inclusion ratio.

LAW AND ANALYSIS

Section 2601 imposes a tax on every generation-skipping transfer. A GST is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Section 2631(a), (in effect at the time of Husband's death) provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(a) (in effect at the time of Wife's death) provides that, for purposes of determining the GST tax, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed. An allocation of GST exemption to a trust is void if the allocation is made with respect to a trust that has no GST potential with respect to the transferor for whom the allocation is being made, as of the date of the transferor's death.

Under § 2632(e)(1) and § 26.2632-1(d)(2), a decedent's unused GST exemption is automatically allocated on the due date for filing the estate tax return for such individual's estate, to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation is irrevocable.

Section 2652(a)(3) states that, with respect to any trust for which a deduction is allowed under § 2056(b)(7) (regarding qualified terminable interest property), the estate of the decedent may elect to treat all of the property in such trust for purposes of the GST tax provisions as if the QTIP election had not been made. This election is referred to as the "reverse" QTIP election. The consequence of a reverse QTIP election is that the decedent remains, for GST tax purposes, the transferor of the QTIP trust for which the election is made. As a result, the decedent's GST exemption may be allocated to that QTIP trust.

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies.

Section 26.2652-2(c) provides that if a reverse QTIP election is made with respect to a trust prior to December 27, 1995, and the GST exemption has been allocated to that trust, the transferor (or the transferor's executor) may elect to treat the trust as two separate trusts, one of which has a zero inclusion ratio by reason of the transferor's GST exemption previously allocated to the trust. The separate trust with the zero inclusion ratio consists of that fractional share of the value of the entire trust equal to the value of the nontax portion of the trust under § 26.2642-4(a). The reverse QTIP election is treated as applying only to the trust with the zero inclusion ratio. An election under this section is made by attaching a statement to a copy of the return on which the reverse QTIP election was made under § 2652(a). The statement is to be filed before June 24, 1996.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute). Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband's estate is granted an extension of time of 60 days from the date of this letter to make a reverse QTIP election pursuant to § 2652(a)(3), effective as of the date of Husband's death, with respect to QTIP Trust 1. The allocation of Husband's GST exemption made with respect to QTIP Trust 1 will be effective as of the date of Decedent's death. Husband's estate is also granted an extension of time of 60 days from the date of this letter to make the election under § 26.2652-2(c) to treat QTIP Trust 1 as two separate trusts, one of which has a zero inclusion ratio by reason of Decedent's GST exemption allocated to QTIP Trust 1, the other of which has an inclusion ratio of one. The reverse QTIP election will be treated as applying only to the trust with the zero inclusion ratio, and Husband will be considered the transferor of this portion of QTIP Trust 1.

The reverse QTIP election should be made on a supplemental Form 706. A copy of this letter should be attached to the supplemental Form 706. The election under § 26.2652-2(c) should be made by completing the statement required in § 26.2652-2(c) and submitting the election, and a copy of the return on which Husband's GST exemption was allocated, along with the supplemental Form 706 on which the reverse QTIP election is made under § 2652(a)(3), to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999. A copy is enclosed for this purpose.

Furthermore, the allocation to QTIP Trust 2 of Wife's GST exemption on the Schedule R attached to the Form 706 filed for Wife's estate was void under § 26.2632-1(d)(1), because QTIP Trust 2 had no GST potential with respect to Wife. Because the allocation of Wife's GST exemption was ineffective, Wife's GST exemption was automatically allocated, under §§ 2632(e) and 26.2632-1(d)(2), to that portion of QTIP Trust 1 that is treated, as of Husband's date of death, as having an inclusion ratio of one for GST tax purposes. This allocation of Wife's GST exemption was based on the value of QTIP Trust 1 on Wife's date of death, as finally determined for federal estate tax purposes.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the

material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically we are not ruling on whether QTIP Trust 1 will have a zero inclusion ratio as a result of the allocations of Husband's and Wife's GST exemptions to that trust.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Curtis G. Wilson
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter